United States Court of Appeals

for the Second Circuit

AMICUS BRIEF

No. 77-8226

77-7231

In The

UNITED STATES COURT OF APPEALS

For The Second Circuit

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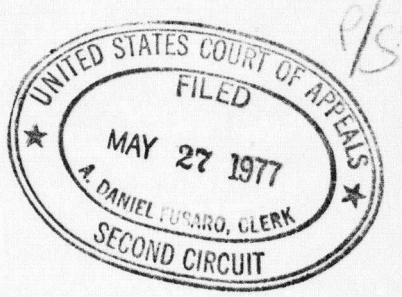

BRITISH AIRWAYS BOARD

and

COMPAGNIE NATIONALE AIR FRANCE,

Plaintiffs-Appellees,

vs.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, WILLIAM J. RONAN, W. PAUL STILLMAN, JAMES G. HELLMUTH, VICTOR R. YANITELLI, MILTON A. GILBERT, JAMES C. KELLOGG, III, ALAN SAGNER, JOSEPH F. CULLMAN, III, JANE ENGELHARDT, LEWIS L. GLUCKSMAN, ROBERT F. WAGNER, Commissioners of the Port Authority of New York and New Jersey, and HOWARD SCHULMAN, Commissioner Designate of The Port Authority of New York and New Jersey,

Defendants-Appellants.

BRIEF AND APPENDIX FOR AMICI CURIAE FRIENDS OF THE EARTH, ET AL. IN SUPPORT OF DEFENDANTS-APPELLANTS

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Preliminary Statement

This brief is submitted on behalf of environmental and neighborhood groups who have participated in this litigation on the side of The Port Authority of New York and New

Jersey ("the Port Authority") almost since it inception. These amici curiae, who join in this brief to urge reversal of the decision below are: Friends of the Earth, Inc., The Environmental Defense Fund, Inc., Metro Suburban Aircraft Noise Association, Inc., Howard Beach Association,Inc., The Hudson River Valley Council, The Emergency Coalition to Stop the SST, Joseph R. Lewis and Carol Berman.

The Port Authority and its Commissioners appeal from a judgment of the Honorable Milton Pollack, entered in the District Court for the Southern District of New York on May 20, 1977. Judge Pollack's ruling directed the Port Authority to extend landing rights and other privileges to the Concorde at Kennedy International Airport ("JFK") for a 16-month period. In so directing, we believe that the District Court proceeded upon a total misapprehension of the terms and significance of an interim decision by former Secretary of Transportation William T. Coleman on "Concorde Supersonic Transport" dated February 4, 1976 (hereinafter "the Decision").

Issues Presented*

1. Is there an irreconcilable conflict between the authorization granted to the Concorde's operators in the Decision and the Port Authority's ban on supersonic landings at JFK?

This question should be answered "no," since the unambiguous terms of the Decision itself condition Concorde's right to commence test flights at JFK on the Port Authority's acquiescence -- an interpretation subsequently reaffirmed in public communications issued by responsible federal officials.

2. If no actual conflict exists between the federal and local positions on Concorde, does the doctrine of federal preemption preclude the Secretary of Transportation from issuing an order, limited in scope and providing:

(a) that the requisite federal approval is granted for a 16-month period of Concorde SST operations at JFK, but

(b) that the recipients of this federal approval are nonetheless required to obtain, also, the approval of the airport's proprietor?

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* Points II and III of this brief deal with arguments urged by the airlines below in support of their motion for summary judgment but not addressed by the District Court in its decision. We have briefed these points on the assumption that the airlines will advance them as alternative grounds for upholding Judge Pollack's ruling; however, because we are uncertain whether the plaintiffs will, in fact, rely upon these contentions here, we have not included them in the "Issues Presented."

This question, too, should be answered in the negative, since no statute, regulation or case law compels the federal government to exercise its statutory powers to the ultimate in each and any decision affecting aviation noise abatement.

Statement of the Case

British Airways Board ("British Airways") and Compagnie Nationale Air France ("Air France") (jointly "the airlines") commenced this action on March 18, 1976, just one week after the Port Authority announced its resolution denying landing rights to any supersonic aircraft at JFK. The four-count complaint for declaratory and injunctive relief alleged that the Port Authority's action was invalid under the Supremacy Clause of the Constitution by virtue of federal preemption in the regulation of navigable air space and aircraft operations (Count 1); conflicted with treaty obligations of the United States (Count 2); interfered with the exclusive authority of the federal government to conduct foreign relations (Count 3); and constituted an unreasonable burden on foreign and interstate commerce (Count 4).

Four months after the commencement of the litigation, and without seeking preliminary injunctive relief, plaintiffs moved for summary judgment on the first three counts of the

complaint. The three-pronged motion argued that the Port Authority's ban on Concorde (i) violated international treaty obligations of the United States; (ii) unconstitutionally interfered with the federal government's authority to conduct foreign relations; and (iii) was preempted by the national scheme of regulation of aircraft noise and flight. That motion remained pending for nearly ten months, fully briefed, while the airlines apparently sought political or international resolution of their problem. After innumerable adjournments Judge Pollack finally insisted that the airlines either submit the motion for decision or withdraw it. Argument took place on Thursday, April 28, 1977 and a decision was rendered on Wednesday, May 11, 1977.

Although the airlines had sought to invalidate the Port Authority's ban on Concorde on three independent grounds, Judge Pollack ruled only on one of them -- the federal preemption issue. His analysis of this question appears deceptively simple and inevitable: that the federal framework provided "adequate statutory authority paramount to that of airport proprietors in the regulation of noise and noise abatement";* that Secretary Coleman had purported to exercise this authority and had, in effect, directed Concorde into JFK; and that, given this interpretation of the

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* Slip Opinion at p. 14.

Coleman Decision, there was an "irreconcilable conflict," requiring that the Port Authority resolution "give way under the Supremacy Clause of the Constitution."* To Judge Pollack, this legal resolution was obvious:

> "Self-evidently then, the PA resolution in effect nullifying the permits to the air carrie.s based on a purpose of PA to re-review the noise criteria applicable to the use of the Concorde at JFK, is in irreconcilable conflict with the federal examination of the question and the federal orders thereon and the PA resolution must give way under the Supremacy Clause in the Constitution."**

This brief will demonstrate that the decision below proceeded in utter disregard of the record. Nowhere did Judge Pollack come to grips with footnote 6 of the Coleman Decision which expressly and unequivocally reserved to the Port Authority the decision to ban Concorde from JFK;*** nowhere did the opinion analyze the extensive legislative history concerning aviation noise abatement, which demonstrates a clear and unmistakable congressional intent to save for airport proprietors the right to determine what type of aeronautical equipment can utilize their private property; and nowhere did the opinion make reference to the interpretation of the Coleman Decision by the federal agencies charged with implementing it.

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* Slip Opinion at p. 29.

** Slip Opinion at p. 29.

*** This footnote is quoted in fill at p. 9, infra.

Rather, the Court below insisted on viewing the controversy as an attempt by the Port Authority to re-fight the Civil War* and the opposition to Concorde as a misplaced opposition to JFK itself.** As a result, Judge Pollack has rendered a decision which goes further in its assertion of federal power than even the President of the United States or the successive Secretaries of Transportation have been willing to go.

The District Court found it "unnecessary" to treat in its opinion two of the principal grounds advanced by the airlines in their motion for summary judgment -- the alleged conflict between the Port Authority's ban and applicable bilateral international agreements and the alleged intrusion of the Port Authority's ban into the federal government's exclusive foreign relations jurisdiction. The Court succinctly stated its view:

> "Those grounds are not applicable to experimental tests which are the only subject matter ruled on by the Secretary and banned by the PA."***

This brief will deal with the treaty question in Point II and the foreign relations issue in Point III -- although we recognize that either or both arguments may be abandoned by the airlines on appeal.

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* See Transcript dated April 28, 1977 at p. 86.

** Id. at pp. 58-59.

*** Slip Opinion at p. 31.

Argument

Point I

THERE IS NO QUESTION OF FEDERAL PREEMPTION BECAUSE THE COLEMAN DECISION EXPRESSLY RESERVED TO THE PORT AUTHORITY THE RIGHT TO TAKE INDEPENDENT ACTION WITH RESPECT TO CONCORDE.

The central issue on this appeal is whether the federal government has ordered the Concorde into JFK or has merely authorized Concorde landings subject to the approval of the Port Authority, as airport proprietor. Only by ignoring an extensive, unambiguous, and consistent series of statements by the responsible federal officials -- including President Carter, Secretary of Transportation Brock Adams, and former Secretary of Transportation William T. Coleman -- could the court below construct a confrontation between federal and local authorities. In fact, the federal government never intended to force the Concorde into JFK over the objections of the airport proprietor, and the final decision on whether the Concorde operates at JFK for the 16-month period described in the Decision rests with the airport proprietor, not the federal government. This is what Secretary Coleman purported to do; his successor in office has adhered to that Decision; and the President of the United States has communicated this interpretation of the Coleman Decision to the governments of Great Britain and France. We briefly review the record.

February 4, 1976: The Coleman Decision contained express recognition of the Secretary's refusal to order JFK to accord landing rights to Concorde. The federal authorization for Concorde to land in the United States was clearly subject to the condition subsequent of airport proprietor approval, an interpretation confirmed in the following passages of the Decision:

> "The FAA is the proprietor of Dulles and it is therefore part of my decision today to direct the Federal Aviation Administrator to permit one Concorde flight per day at Dulles by each carrier under the conditions noted. The situation with respect to JFK may be complicated by the fact that under federal policy that has hitherto prevailed a local airport proprietor has had authority under certain circumstances to refuse landing rights. If for any legitimate and legally binding reason it should turn out that the JFK part of the demonstration could not go forward --and no one has indicated to me any such final disposition by JFK's proprietor--that would obviously be extremely unfortunate and would greatly diminish, but in my opinion it would not destroy, the validity of the demonstration. (at p. 3 n.6)

* * *

> "Accordingly, I hereby order the Federal Aviation Administrator to issue on March 4, 1976, an order provisionally amending the operations specifications of British Airways and Air France, as described and subject to the terms and conditions set forth on pages 3 and 4 above." (at p. 61)

Just as the airlines choose to ignore the first quoted passage -- footnote 6 -- so they seize upon the second

quoted passage -- the so-called "ordering" language of the Coleman decision. Clearly, however, the "terms and conditions" to which the "order" was subject presumably included those described in footnote 6 on page 3 of the Decision. There, Coleman specifically stated that whereas he was directing the Federal Aviation Administration to admit Concorde to Dulles, he was merely authorizing, not ordering, the landing of Concorde at JFK. The express statement that the problem of Concorde landing rights at JFK "may be complicated by the fact" of the "federal policy" he described, was not merely a general statement about some class of unrelated situations. Coleman was talking about the Concorde, about JFK, and about the specific possibility that the Port Authority might refuse landing rights. Coupled with Coleman's announcement on November 13, 1975 in advance of the Decision, that any federal authorizations would be subject to the proviso that "the airport operators agree," there can be no doubt.*

Subsequent statements by federal authorities confirmed the federal government's refusal to override the Port Authority's temporary ban on Concorde, posing the issue in terms of power as well as policy. This is not a situation where the federal authorities have deferred to the federal courts by stating "no

* The Coleman announcement dated November 13, 1975 is part of the record on appeal.

comment" or relying on the fact that the matter was "sub judice." Rather, they have expressly stated, time and again, that the decision to admit Concorde rests with the Port Authority. The federal government had every reason to expect that its frequent out-of-court (but on-the-record) endorsements of the Port Authority's position would be brought to the Court's attention and accorded proper weight.

March 24, 1976: Following the passage of the Port Authority's resolution imposing a six-month ban on Concorde, former Secretary Coleman issued a press release in response to "numerous inquiries about his position." Although Coleman expressed his disappointment at the Port Authority's resolution, he nevertheless adhered to his initial determination:

> "In my decision of February 4, however, I indicated that if 'for any legitimate and legally binding reason' it should turn out that the JFK part of the demonstration could not go forward, that would not destroy, although it obviously would greatly diminish, the validity of the demonstration. This statement was made in recognition of the fact that under federal policy that has hitherto prevailed a local airport proprietor has had authority under certain circumstances to refuse landing rights. For the present this remains the policy of the Department." (Press Release dated March 24, 1976 attached as Exhibit "I" to the Port Authority's Answer)

Coleman was not speculating about the "federal policy" in a vacuum; he was reaffirming the intent of his written Decision:

to authorize the landing of Concorde at JFK, not to impose it.*

November 1976: After the Port Authority's temporary ban had been in effect for well over six months, the Department of Transportation and Federal Aviation Administration issued the "Aviation Noise Abatement Policy" ("ANAP") which, as a matter of formal written policy, reaffirmed in more general terms the position taken in the specific context of Concorde. The federal government stated that it had "considered carefully and rejected" any "full and complete federal preemption of the field of aviation noise abatement." (ANAP at p. 34) Instead, airport proprietors were left with "the power . . . to control what types of aircraft used its airports, to impose curfews or other use restrictions, and, subject to FAA approval, to regulate runway use and flight paths . . . ." (ANAP at p. 34)

The ANAP went on to state that the Department of Transportation would intervene in pending litigation to challenge an "unacceptable use restriction" by an airport proprietor. (ANAP at p. 60) Apparently after viewing the motion papers submitted in this action on behalf of the

* Although Judge Pollack referred in his decision to this press release of former Secretary of Transportation Coleman, he neglected to quote or refer to the pertinent language quoted above."

airlines,* the federal government reaffirmed its support for the Port Authority's legal posture. Against this background, the failure of the federal government to intervene here is not a neutral fact; it is tantamount to an express rejection of the airlines' arguments.

February 17, 1977: In news reports published February 17, 1977, President Carter's press secretary announced that the President had informed the British and French governments that the ultimate decision on whether Concorde landed at JFK was up to the airport proprietor, not the federal government:

> "The President stated [to the European leaders] that he cannot direct the Port of New York Authority or the Governor of New York to reach a particular decision. That is theirs alone to decide." (N.Y. Times, Feb. 17, 1977, at 78, col. 1.) (Attached as Exhibit A)

The context of this presidential communication appeared to be that after the new administration took office in January 1977, the British and French governments tried to obtain a reversal of the previous administration's announced policy of leaving the final decision on Concorde landing rights at JFK to the airport operator. Instead of reversing that policy, President Carter reaffirmed it. Shortly after this presidential

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* At oral argument on April 28, 1977, counsel for the British Airways Board conceded that the federal authorities "have looked at our papers ...." (Transcript at p. 72)

statement was made public, Transportation Secretary Brock Adams issued a statement fully supporting the President's position, adding that "New York officials alone must decide on SST service at JFK." (Noise Control Report, Feb. 28, 1977, at 34.) (Attached as Exhibit B)

March 6, 1977: Less than a month later, in the course of the presidential "call-in", President Carter had an opportunity to reaffirm his earlier stated position in response to a question concerning Concorde:

> "As you know, under the Federal Law I have authority over Dulles Airport, and so did President Ford, and we're permitting the test flights to come into Dulles and we're very carefully monitoring the environmental consequences of the SST flights, including primarily noise.
>
> "Kennedy Airport in New York is not under my control at all. I have nothing to do with it, no authority over it. The New York Port Authority has that decision to make and I understand that on March 10 they are going to make a decision whether the Concorde can come in for test flights or not. I don't know what that decision will be." (N.Y. Times, March 6, 1977, at 33, col. 1) (Attached as Exhibit C)

Thus, President Carter has stated the federal position in words so plain as to exclude any ambiguity.

April 15, 1977: On April 15, 1977, the present Secretary of Transportation held a press conference to announce the issuance of a draft "Environmental Impact Statement" entitled "Noise Regulation and Type Certification Alter-

natives for Civil Supersonic Aircraft" (hereafter "Draft EIS"). During the question and answer period, Secretary Adams made the plainest conceivable statement of the federal government's position:

> "QUESTION: (inaudible) our French and English allies, is there no way that the Federal Government can open up Kennedy to Concorde flights? Is there nothing at all you can do?
>
> "SECRETARY ADAMS: Not without changing the whole basic policy of approach that has occurred in the United States to this point, which is that we go with certification of aircraft and with noise rules, and the individual airports determine the so-called footprint or operating noise specifications of their individual fields. And so, we have been observing with our French and British friends precisely the rules we apply here." (Transcript of news conference of Brock Adms on April 15, 1977 at pp. 5-6) (Attached as Exhibit D)

The Draft EIS itself stated in express terms that Concorde needs local approvals for landing at any airport other than Dulles:

> "Only Dulles is federally operated and therefore only federal approval is required for Concorde operations. The other airports are operated by local or regional authorities whose authorization must also be obtained for the Concorde to operate." (Draft EIS at p. 25)*

April 25, 1977: The State Department has followed the example of the Department of Transportation and the President

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* The entire Draft EIS is part of the record on appeal.

in refusing a request by the British Government to intervene and support New York landing rights for the Concorde. According to a news account of the incident, the State Department deferred to the Port Authority:

> "The State Department has refused a request by the British Government to step in and help support New York landing rights for the Concorde. The British sought the support during bilateral negotiations, claiming the matter relates to the air services agreement. At a Washington press conference, however, Alan Boyd said 'international agreements do not amend the Constitution' under which local and state authorities have a say." (Aviation Daily, April 25, 1977, at 315) (Attached as Exhibit E)

Post-Argument: Immediately following the court hearing on April 28, 1977, several news articles appeared quoting federal sources in support of the Port Authority's position. Apparently one spokesperson for the Secretary of Transportation stated:

> "This is an area the federal government has not preempted. It is subject to local law, so it is up to the Port Authority to control the issue (of the Concorde)." (New York Post, April 30, 1977, at 5, col. 3) (Attached as Exhibit F)

In addition, the former head of the New York State Environmental Department has confirmed that he served as the conduit through which the State Department communicated to the Port Authority "that it had the legal power to ban the flights." (Newsday, April 30, 1977 at 11, col. 3) (Attached as Exhibit G)

Finally, President Carter for the third time made a public statement disclaiming any federal authority with respect to admitting Concorde at JFK:

> "As you know, under the Federal Law I have authority over Dulles Airport, and so did President Ford, and we're permitting test flights to come into Dulles ....
>
> "Kennedy Airport New York is not under my control at all. I have nothing to do with it, no authority over it. The New York Port Authority has that decision to make . . . whether the Concorde can come in for test flights or not. I don't know what that decision will be."*

In sum, the record could not be plainer that former Secretary Coleman intended to grant no more than the requisite federal permission to Concorde -- not an order directing the airport operator to grant its permission for Concorde operations. Nor could the record be plainer that President Carter and Secretary Adams have declined to expand the scope of what former Secretary Coleman granted. These federal statements are flatly inconsistent with the holding of the court below. It is clear that the federal government never intended to issue an order to the Port Authority -- an order which the responsible federal officials, from the President on down, say they lack even the power to issue.

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* White House Press Release dated May 2, 1977, attached as Appendix G at p. 54a of the Port Authority's Appendix to Post-Argument Memorandum.

Whether or not the federal government, in fact, has the power to force the Concorde into JFK over the objections of the Port Authority, assuredly it has the right not to force the Concorde into JFK. The power to authorize, without ordering, Concorde flights into JFK is the only power which the federal government has even purported to exercise in this case. In effect, the lower court has usurped the function of the responsible federal officials of the executive branch by issuing a sweeping order which those officials disclaim ever having intended.

The judicial function in this case, as the court below did recognize, was to declare "the scope of the exercise" of "federal power in the premises" and whether the Port Authority's action "clashes therewith."* The question before the court was not whether the Port Authority's action clashed with the broadest exercise of federal power that might be imagined but not attempted. Under these circumstances, there was no conflict under the Supremacy Clause of the Constitution for the district court to resolve by reference to the doctrine of federal preemption -- unless federal officials are "preempted" from limiting their authorization in that manner. Such a decision would mean that no federal official could grant a

* Slip Opinion at p. 6.

limited permission, fashioned to preserve traditional local prerogatives, without having the permission blown up like a balloon until it assumed a wholly different shape from the one intended. There is no such requirement that federal officials exercise the full extent of their constitutional and statutory powers, as construed most broadly. That result would be absurd; the federal government would be muscle-bound to the point of paralysis.

Point II

THE DECISION BELOW CANNOT BE AFFIRMED ON THE TREATY GROUND SINCE THE RELEVANT AGREEMENTS -- THE CHICAGO CONVENTION AND BILATERAL AGREEMENTS -- DO NOT ADDRESS THE SUBJECT OF EXPERIMENTAL FLIGHTS AND, AT ANY RATE, EXPRESSLY PERMIT LOCAL REGULATION.

In the court below, British Airways and Air France placed primary reliance on international agreements in their attempt to obtain landing rights for the Concorde at JFK. In view of this earlier thrust, as well as the possibility that the airlines will attempt to sustain Judge Pollack's decision on these alternative grounds, we treat the treaty issue here.

We will describe the proceedings which led to the international agreements in question, the nature and content of those documents and their inapplicability to the present controversy. We will show that today's system of international air transport continues to favor local rather than international controls; that Concorde's rights are conditional rather than vested; and that the United States has interpreted its foreign commitments as allowing the maximum latitude for local regulation. Most important, the international agreements on which the airlines rely do not even purport to address the pertinent inquiry here: the circumstances under which experimental test flights -- of the Concorde or any other aero-

nautical equipment -- may land on private property in the United States.

Background: the historical context of the Chicago Convention and the Bilaterals

The foundation of international air transportation in the post-World War II era was laid by the Chicago Convention of 1944,* a document which has been ratified by approximately 150 nations. Although credited with the facilitation and development of international air transport, the Chicago Convention did not have the intent or effect of granting foreign air carriers unbridled freedom of operation across national boundaries. Rather, the Chicago Convention represents an international compromise in which sovereign rights prevail over international controls.** Thus, Article 1 of the Chicago Convention states:

> "The contracting States recognize that every State has complete and exclusive sovereignty over the air space above its territory."

This basic principle of airspace sovereignty is reaffirmed throughout the Chicago Convention: Article 6 expressly forbids scheduled international air service without prior permission

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* Convention on International Civil Aviation, 61 Stat. 1180, T.I.A.S. No. 1591 (December 7, 1944) (hereafter "the Chicago Convention").

** See B. Cheng, The Law of International Air Transport 18-28 (1962).

and authorization from the government involved and Article 11 subjects foreign aircraft to local laws and regulations relating to the ingress, egress, operations and navigation of aircraft engaged in international travel. Those provisions read in their entirety:

> "No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization. (Article 6)
>
> * * *
>
> "Subject to the provisions of this Convention, the laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of all contracting States without distinction as to nationality, and shall be complied with by such aircraft upon entering or departing from or while within the territory of that State." (Article 11)

In the aftermath of the Chicago Convention, participating governments proceeded to negotiate bilateral air transport agreements with one another in order to regulate commercial traffic rights. In February 1946 the United States and the United Kingdom entered a bilateral agreement known as the "Bermuda Agreement,"* and a month later, the United States and France reached a bilateral agreement known as the "Paris

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* Air Services Agreement between the United States and the United Kingdom, 60 Stat. 1499, T.I.A.S. No. 1507 (February 11, 1946) (hereafter "the Bermuda Agreement").

Agreement."* In form, the bilaterals were executive agreements rather than treaties approved by Congress.

The Bermuda and Paris Agreements provide for the exchange of air routes and traffic rights and describe the conditions which may attach to the exercise of such rights by the foreign airlines. In form, each bilateral comprises two parts: the "agreement" which includes definitions and general principles and the "annex" which effectuates the economic and commercial content of the agreement by specifying routes to be flown. The bilaterals do not fix immutable landing rights at specific airports, for the routes themselves as well as the points served are subject to modification by the parties.**

The Bermuda and Paris Agreements begin in their first articles with a general grant of "rights" to the extent further described in the annexes. The second article of the bilaterals provides for the "inauguration of services" between the contracting parties, and succeeding paragraphs describe the conditions and reservations to which the international flights are subject. These conditions include the necessity for approvals from the aeronautical authorities (the

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* Air Services Agreement between the United States and France, 61 Stat. 3446, T.I.A.S. No. 1679 (March 27, 1946) (hereafter "the Paris Agreement").

** See Paris Agreement, art. XIII, annex §VII; Bermuda Agreement, art. 8, annex §IV(a)-(b).

second article); the imposition of charges for the use of airports (the third article); the right to refuse to recognize certificates of competency and licenses (the fourth article); the application of laws and regulations relating to the ingress, egress, operation and navigation of aircraft and the entry, clearance, immigration, passports, customs and quarantine restrictions on passengers, crew and cargo (the fifth article); the revocation or withholding of operating certificates and permits (the sixth article). Each bilateral provides for the mandatory referral of disputes dealing with the interpretation and application of the agreement to an international advisory body, provides for the amendment of the agreements after consultation, and allows for termination of the agreement on twelve months' notice.*

The airlines' argument
in a nutshell

The airlines, claiming as third-party beneficiaries under the bilateral agreements, assert "vested rights" to land at JFK. In essence, British Airways and Air France claim that their rights to land any type of commercial aircraft in this country vested, pursuant to article two of the bilaterals, upon their designation as the British and French air carriers and subsequent satisfaction of the federal aeronautical author-

* See Paris Agreement, art. X, XIII(b)-(d); Bermuda Agreement, art. 8, 9, 13.

ities. This claim is made in utter disregard of the fact that article two of the bilaterals fails even to address the issue whether airlines may fly new types of equipment into international airports; ignores the existence of the fifth article of the bilaterals which subjects foreign airlines to local as well as federal authorities; and fails to interpret those agreements by reference to established canons of construction and the conduct of the parties.

The governing provision of
the bilaterals: Article 5

In reaching their conclusion that landing rights at JFK are "vested", the airlines tend to ignore the language of article five. That section specifically imposes conditions on flights by foreign airlines by requiring them to comply with "laws and regulations" relating to the operation, navigation, landing and departure of aircraft. Thus, the virtually identical provisions of the Bermuda and Paris Agreements state:

> "The laws and regulations of one Contracting Party relating to entry into or departure from its territory of aircraft engaged in international air navigation or to the operation and navigation of such aircraft while within its territory shall apply to aircraft of the designated air carrier or carriers of the other Contracting Party."
> (Bermuda Agreement, art. 5)

* * *

> "The laws and regulation of one Contracting Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the other Contracting Party, and shall be complied with by such aircraft upon entering or departing from or while within the territory of the first party." (Paris Agreement, art. V)

These provisions parallel similar language contained in Article 11 of the Chicago Convention.

There is no doubt that the phrase "laws and regulations" contained in the fifth article of the bilaterals subjects foreign carriers to local airport regulation. This result follows from the terms that were used, the negotiation history of the bilaterals, the accepted criteria for interpreting international agreements, and the subsequent conduct of the U.S., U.K. and France in the performance of the bilaterals.

Beginning with the plain language of the bilaterals, there is no restriction in "laws and regulations of the Contracting Party" to federal laws or the regulations of federal administrative agencies. Since the United States entered the bilaterals as a federal rather than a unitary government and failed to negotiate language that clearly expressed an intent to override state or local law, the presumption must be that local regulation survives. The Supreme Court stated this

principle of treaty construction in Guaranty Trust Co. v. United States, 304 U.S. 126 (1937):

> "Even the language of a treaty wherever reasonably possible will be construed so as not to override state laws or to impair rights arising under them." Id. at p. 143.

In effect, the terms "laws and regulations" must be read to encompass the entire domestic law of the contracting party which, in the case of the United States, includes state and local regulation.

This construction of the bilateral agreements is supported in a commentary on the terms "laws and regulations" by two authorities on aeronautical law who have stated with respect to the fifth article that foreign aircraft are subject to federal as well as local laws:

> "Very important to all aircraft operation is Article 5 . . . . This provision effectively subjects foreign aircraft to U.S. federal and local laws. Thus, the United States may control the environmental effects of stratospheric flight provided that local or federal law authorizes such control." Larsen & Faggen, "Regulation of Stratospheric Flights In Order To Control Adverse Environmental Effects," 40 J. Air Law & Comm. 259, 279 (1974)."*

* Both authors were employed in the Department of Transportation at the time the article was written: Mr. Paul B. Larsen was in the Office of the General Counsel and Mr. Edgar S. Faggen was in the Office of the Chief Counsel, Federal Aviation Administration.

A construction of the bilaterals which subjects foreign aircraft to local airport regulation as well as the regulations of federal aeronautical authorities, is also consistent with the negotiation history of these agreements. A central thrust of the bilaterals was the uniform treatment of foreign and domestic airlines -- a concern expressed in the Chicago Convention as well as the bilaterals.* An interpretation of the bilaterals that exempted foreign air carriers from local regulations that were applicable to our domestic carriers would, in effect, grant the foreign airlines preferential rights. Such an interpretation would run contrary to accepted canons of interpretation. See Todok v. Union State Bank, 281 U.S. 449, 454-55 (1930).

There has been some judicial interpretation of language in international agreements which is analogous to "laws and regulations of the Contracting Party." In each and every case the court held that expressions such as "laws" of "both countries" or "high Contracting Party" or "of the place where the person sought shall be found" made reference to local laws rather than to the laws of the United States. See Petit v. Walshe, 194 U.S. 205, 217 (1904); Wright v. Henkel, 190 U.S. 40, 58-59 (1903); Shapiro v. Ferrandina, 478 F.2d 894,

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* See Chicago Convention, art. 9, 11, 15; Paris Agreement, art. II(b), III(a)-(c), IV, V; Bermuda Agreement, art. 2(2), 3(1)-(3), 4, 5.

901 n.4 (2d Cir. 1973); Jhirad v. Ferrandina, 362 F. Supp. 1057, 1063 (S.D.N.Y. 1973). These judicial interpretations of substantially similar language reaffirm an interpretation of "laws and regulations" which includes regulation by local airport proprietors.

Article five of the bilaterals is ignored by the airlines on the theory that the second article of the bilaterals sets forth the only prerequisites to the "inauguration of the agreed services" -- namely, the designation of the carrier by the contracting parties and conferral of the appropriate operating permission by the aeronautical authorities of the United States. On examination, however, the plain language of article two of both treaties demonstrates that their provisions deal narrowly with the inauguration of services between the contracting parties and not with changes in the nature or extent of services. The reference in article two to "agreed services" guaranties particular routes, not the use of particular equipment, and the conditions precedent in article two describe the initial steps for the commencement of international services between the contracting parties, not the prerequisites for the continuation or alteration of services. At any rate, article two of the bilaterals must be read in conjunction with article five which stands on its own. These provisions of the bilaterals -- just like all parts of a treaty -- should "receive a reasonable construction with a view to giving a fair operation

to the whole." Sullivan v. Kidd, 254 U.S. 433, 439 (1921).

With this analysis in mind, Judge Pollack concluded in his opinion below that the treaty argument advanced by the airlines was "not applicable to experimental tests which are the only subject matter ruled on by the Secretary and banned by the Port Authority."*

The interpretation of the bilaterals by the parties

Finally, turning to the conduct of the U.S., U.K. and France as well as the airlines themselves, we find reaffirmation of the Port Authority's right to condition or forbid flights into JFK.

1. For many years Air France and British Airways have been operating into JFK in accordance with Port Authority regulations concerning aircraft operations. Some of these restrictions and conditions are contained in a pamphlet issued by the Port Authority entitled "Airport Rules and Regulations," an extract from which is attached to this brief as Exhibit H.**

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* Slip Opinion at p. 31.

** Exhibit H includes only those regulations relating to "aircraft operations" (Section 300) and deletes regulations dealing with (i) limitations on commercial activity, personal conduct and dangerous articles (Section 200), and (ii) ground support equipment (Section 400), which were not deemed pertinent.

As it indicates, the Port Authority has long regulated the landing and taking off of aircraft, their operations on the ground, and the starting, taxiing, towing and parking of aircraft. Indeed, for some period of time the Port Authority has required all jet aircraft to obtain permission before landing or taking off.*

At the oral argument in the court below, the Port Authority asserted, without contradiction, that the British and French airlines have complied with this noise regulation for nearly two decades:

> "We have had a regulation in effect since 1951 which says no jet aircraft shall land at any Port Authority airport without permission of the Port Authority.
>
> "There is a very clear procedure for obtaining that permission which has been followed by the British and French since 1959 when it was first adopted and the test up to this point has been whether or not the aircraft can rate 112 PNJB at given points of airport [sic]."**

Thus, any claim by Air France or British Airways that they are somehow immunized from any regulation by the Port Authority flies in the face of their relationship with the Port Authority for many decades.

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* Section 320/0-06. of the Port Authority's "Rules and Regulations" provides as follows: "No jet or turbo-prop aircraft may land or take off at an air terminal without permission."

** Transcript dated April 28, 1977 at p. 82.

2. The conduct of the United Kingdom and France in this controversy has similarly not reflected a view that the Concorde's right to land is insured by international obligations. Apparently both countries have taken the posture that there are no express or implied international commitments obliging the United States to permit the Concorde to land here.* This view is certainly consistent with the failure of those sovereigns to invoke the dispute mechanism of the bilateral agreements with respect to the Concorde controversy.**

3. The airlines' flat assertion that "the only prerequisites to the inauguration of the agreed services are designation of the carriers and conferral of the appropriate operating permission by the aeronautical authorities of the United States" claims too much. Whatever the prerequisites to the inauguration of service in the United States, foreign airlines that do operate within the United States are subject to a broad range of legislation -- both aeronautical and nonaeronautical -- enforced by a diverse group of agencies. See Fore-

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* See Decision at p. 2.

** The extent to which the Bermuda Agreement will continue to govern the aeronautical relations between the United States and the United Kingdom is doubtful in view of the United Kingdom's announced decision on June 22, 1976 to invoke the consultation provisions of Article 13, and, pending negotiations, to withdraw from the Bermuda Agreement in 12 months' time.

most International Tours v. Quantas Airways, Ltd., 525 F.2d 281 (9th Cir. 1975) [affirming the grant of a preliminary injunction in a private antitrust action prosecuted by a tour producing agency]; Marriott v. NLRB, 491 F.2d 367 (9th Cir. 1974) [enforcing an NLRB order, penalizing Lufthansa and a food-service workers union for entering a so-called "hot cargo" agreement, which constitutes an unfair labor practice under the Labor Management Relations Act]; Swissair v. Kennedy, 327 F. 2d 860 (D.C. Cir. 1963) [upholding a fine against petitioner airline by the Board of Immigration Appeals for the illegal transportation into the United States of an alien without a proper visa, in violation of the Immigration and Nationality Act]. Cf. United States Overseas Airlines, Inc. v. Compania Aerea Viajes Expresos de Venezuela, 246 F.2d 951 (2d Cir. 1957), cert. denied, 355 U.S. 893 (1957) [affirming judgment for defendant and cross-claimant foreign airline in a breach of contract suit].

4. The only executive interpretations of the bilateral agreements by American officials confirm our view that foreign airlines are subject to local environmental restrictions. Thus, former Secretary Coleman's Decision relies on the fifth article of the bilaterals for its holding that Concorde is subject to environmental laws of the United States and, can be denied unrestricted permission to operate in this country. After posing

the question of whether the federal government was "compelled" by international law to permit the landing of Concorde, Secretary Coleman concluded that the Bermuda and Paris Agreements "reserve to the United States the authority to deny the Concorde permission to land altogether":

> "It is these provision [article five] of the international agreements that also reserve to the United States the authority to deny the Concorde permission to land altogether, or to place restrictions on Concorde operations, if unrestricted permission to operate would be inconsistent with the policies expressed in the environmental laws of the United States." Decision at pp. 10-11 n. 13.

Thus, Coleman expressly rejected the airlines' vested rights theory and concluded that the bilaterals standing alone did not authorize admission of Concorde. This language of the Decision must be read in conjunction with footnote 6 containing Secretary Coleman's express recognition that the Port Authority might refuse landing rights in accordance with prevailing federal policy. In so stating, the Department of Transportation, as the appropriate federal "aeronautical authority," has adopted the Port Authority's local restriction as a compliment to applicable federal controls. Thus, regardless of whether the bilaterals themselves permit local airport proprietors to restrict landing rights for specific aircraft, in this instance the federal authorities have expressly incorporated the local restriction as a condition to Concorde's landing at JFK.

5. The nonintervention of the United States in this litigation with respect to its interpretation of the bilaterals strongly suggests that Secretary Coleman's pronouncements represent the official interpretation of the bilateral agreements by the Executive branch, a factor which should be accorded "great weight" in interpreting the international agreements at issue. See Restatement, Foreign Relations Law of the United States, §152 (1965); Eastern Airlines v. Port Authority, 259 F. Supp. 745, 753 (E.D.N.Y. 1966).

Just as significant, are recent public statements by Ambassador Allan Boyd, who is representing the United States in the negotiations between the United States and the United Kingdom in connection with the Bermuda Agreement. On April 22, 1977, in the course of a news briefing on the status of the U.S.-U.K. air negotiations, Ambassador Boyd stated:

> "The position the United States takes is that any aircraft operated by a party to the agreement should be permitted to fly to and from the United States so long as it complies with laws and regulations and the position the United States has taken is that the laws and regulations are both state and local and that it is a matter of domestic law and interpretation of domestic law as to whether the Port of New York Authority has, in fact, the power to issue noise regulations and to as a result of those noise regulations ban the use of any type of aircraft.
>
> "Q. Then what is the use of negotiating if the government is a local jurisdiction can practically --
>
> "Ambassador Boyd: That is the point the United Kingdom has been making, but the facts are that whatever the laws of any government may be the executive agreements that that country enters into is going to be subject to those laws.

"I shouldn't say 'any country', but in the United States and we have made that clear all along.

"International agreements do not in any way change our constitution. We don't amend our constitution by entering into treaties or executive bilateral agreements."*

Thus, the executive branch of the federal government has publicly agreed that the bilaterals do not guarantee landing rights for Concorde and that compliance with local regulations is still required.

The right of access to JFK

As a collateral point, the airlines have argued in the past, and may argue again, that the bilaterals specifically grant an absolute right to use JFK in servicing the granted routes. This argument is based on language contained in the annexes of the bilaterals to the effect that the air carriers shall be accorded the use of "airports designated for international air services"** or "all airports opened to international traffic."*** Concluding that JFK falls within this description, the airlines argue that the bilaterals grant "the specific right to use JFK." This proposition, like the ones that preceded it, overlooks pertinent provisions of the Chicago Convention and

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* This statement by Ambassador Boyd is reprinted at the Port Authority's Appendix H, pp. 57(a)-58(a).

** Bermuda Annex §I.

*** Paris Annex §III.

the bilaterals and misconstrues the annex provisions relied upon.

The Chicago Convention expressly permits contracting states to designate the airports to be used as well as the routes to be flown. Thus, Article 68 provides as follows:

> "Each Contracting State may, subject to the provisions of this Convention, designate the route to be followed within its territory by any international air service and the airport which any such service may use."

In turn, the airports engaged in international travel may impose conditions on foreign aircraft -- so long as "uniform conditions" are applied. Thus, Article 15 of the Chicago Convention, dealing mainly with airport charges that may be imposed, also provides that international airports must be open "under uniform conditions to the aircraft of all the other Contracting States." Finally, Article 28 of the Chicago Convention obliges contracting countries to supply airports only "so far as it may find practicable." These provisions clearly indicate that immutable landing rights at designated airports were not among the principles incorporated in the Chicago Convention.

With respect to the bilateral agreements, they too do not grant the unconditional right of access to JFK, an airport which is never mentioned by name in the Bermuda or Paris Agreements. The provisions relied on by the airlines, Section

I of the Bermuda Annex and Section III of the Paris Annex, must be read in conjunction with the independent conditions imposed by article five -- as well as the conditions imposed throughout the bilaterals. Unless a foreign airline satisfies the "conditions precedent" to exercising landing rights, such as compliance with applicable "laws and regulations" (article five), payment of airport charges (article three) and maintaining necessary certificates and licenses (article four), it cannot claim a vested right to land at a specific international airport.

Even if those annex provisions are viewed in a vacuum, however, they only direct that the airlines be accorded use of the international airports on particular routes -- not on particular flights. Thus, so long as British Airways and Air France enjoy rights of commercial entry and departure at JFK with respect to scheduled flights on the designated routes, there has been compliance with the language of the annexes.

In conclusion, there is no "conflict" between the Port Authority's resolution and the terms of the governing international agreements. Absent some clear and unavoidable conflict, the Port Authority's action must be sustained as consistent with the principle that international agreements be construed to preserve local regulation wherever possible. See United

States v. Pink, 315 U.S. 203, 230 (1942); Pearl Assurance Company v. Harrington, 38 F. Supp. 411 (D. Mass.) (Frankfurter, J.), aff'd per curiam, 313 U.S. 549 (1941).

Point III

THE PORT AUTHORITY'S RESOLUTION ON CONCORDE DOES NOT INTERFERE WITH THE FOREIGN RELATIONS POWERS OF THE FEDERAL GOVERNMENT.

British Airways and Air France invoked in the court below, the broad, undifferentiated federal foreign relations powers for their conclusion that the Port Authority's resolution unconstitutionally interferes with the authority of the federal government to conduct foreign relations. While this claim may be abandoned on appeal, we briefly dispose of this fallback argument of the airlines -- an argument which misconstrues the nature and effect of Secretary Coleman's Decision as well as the nature and effect of the federal foreign relations powers.

The absence of an official United States position on the Concorde

The airlines premise their foreign relations claim upon the assumption that the United States has taken an official position on the Concorde which is somehow binding on the Port Authority and this Court. In effect, the airlines have invoked the "political question" doctrine and asked that conclusive effect be given to a determination of the Executive

Branch to admit Concorde. The only alleged crystallization of this exercise of the foreign relations power is in the Decision of Secretary Coleman, in an informal communication by former Secretary of State Kissinger, and in self-serving pronouncements by representatives of the British and French interests. In fact, neither the President nor any authorized official has taken the type of definitive action which might preclude local regulation.

Characterizing the Coleman Decision as "a delicate exercise in foreign relations," the airlines ignore the obvious fact that the Decision represented an exercise of authority in the field of responsibility in which the Secretary is charged: transportation. Considerations of foreign relations played no more than a secondary role in a judgment that was based primarily on technological and environmental considerations.* Far from being a delicate exercise in foreign relations, the Decision represents a delicate and complex technological choice with only speculative foreign affairs consequences.

With respect to the Kissinger letter,** that document merely reinforces the subsidiary role that foreign relations

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* This conclusion is made concrete by the fact that only 3 of the 61 pages comprising the Decision deal with international relations.

** Quoted in plaintiffs' memorandum below at pp. 26-27 and attached as Exhibit H to the airlines' moving papers.

played in the Coleman evaluation. An informal note beginning "Deal Bill," the Kissinger letter represents the only pronouncement from the Department of State on which the airlines rely. This document fails to invoke any specific federal foreign policy regarding the Concorde and instead merely advises Coleman to "weigh carefully" the concerns of France and the United Kingdom in rendering a decision that takes into effect "environmental and other criteria."

To our knowledge, the Department of State has not issued any formal reaction to the Coleman Decision or taken any official stand with respect to the Port Authority's resolution. Nevertheless, the recent statements by President Carter quoted earlier in this brief* completely undermine whatever might be left of this foreign relations argument. Moreover, the State Department itself has apparently played an active, if not formal, role in this controversy. Thus, the State Department has apparently advised at least one official from the United Kingdom that the Port Authority ban on Concorde is permissible under our federal system.** In addition, news reports suggest that the State Department has refused a request by the British government to intervene in this litigation (Exh. E) and rendered legal advice to the Port Authority that its

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* See pp. 13-17, supra and Exhibits A and C.

** See the Port Authority's Post-Argument Memorandum at p. 14.

Concorde ban was legal so long as it was non-discriminatory (Exh. G).

These incidents, coupled with the failure of the State Department to intervene in the instant suit, strongly suggest that the foreign relations repercussions of the Concorde controversy will continue to play, at most, a secondary role. Obviously, the British and French expressions of interest in the Concorde issue, hardly transform the Decision into an "exercise in foreign relations" and do not supply the missing premise of plaintiffs' syllogism -- a genuine exertion of the President's foreign relations powers.

The noninfringemment of the federal foreign affairs powers

The airlines' basic proposition -- that the Port Authority resolution is an impermissible or unconstitutional infringement of the President's powers to conduct foreign affairs -- misconstrues the nature of those powers and the extent to which they preempt or invalidate local regulation.

As a starting point, we note that state legislation or local regulation within traditional areas is not displaced simply because of possible international repercussions. This principle finds expression in a line of federal cases holding that state regulation with "some incidental or indirect effect

in foreign countries" does not cross the forbidden constitutional line. Clark v. Allen, 331 U.S. 503, 517 (1947); Shames v. Nebraska, 323 F. Supp. 1321, 1332 (D. Neb. 1971), aff'd per curiam, 408 U.S. 901 (1972). See also Rocca v. Thompson, 223 U.S. 317 (1912). Courts have long upheld local regulation in areas at least as sensitive to foreign relations as the regulation of transportation. E.g. Patsone v. Pennsylvania, 232 U.S. 138 (1914) [holding constitutional a state law forbidding foreign born state residents to own firearms for the purpose of killing wild birds or animals]; Disconto Gesellschaft v. Umbreit, 208 U.S. 570 (1908) [permitting states to grant priority in the distribution of a bankrupt's assets to citizens of the state over foreign creditors]; Liverpool & London Life and Fire Ins. Co. v. Oliver, 77 U.S. 566 (1871) [holding that the State of Massachusetts could subject a British association to local corporate business taxes, despite an act of Parliament under which the association was deemed not a corporation]. See also Pearl Assurance Co. v. Harrington, 38 F. Supp. 411 (D. Mass. 1941), aff'd per curiam, 313 U.S. 549 (1941) [holding constitutional a Massachusetts statute which required foreign companies to appoint U.S. citizens as resident managers].

These authorities demonstrate that the exclusive federal foreign affairs power to which plaintiffs allude is not an exclusive federal right to make decisions affecting foreign

affairs, but rather a limited set of specific prerogatives inherent in the concept of national sovereignty -- the power to recognize governments, to make war and to keep peace, to make treaties and other international agreements, and to maintain diplomatic relations with other countries.* The cases previously relied on by the airlines merely illustrated the interference of State policy with a specific exercise of the foreign relations power.

In conclusion, the airlines have sought to challenge the Port Authority's action on the basis of a constitutional principle which has been exaggerated in scope and effect. Not only does the Port Authority's resolution not interfere with federal policy, it was expressly anticipated and sanctioned by the federal policymakers -- including the President of the United States.

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* Restatement, Foreign Relations Law of the United States §117, comment (c) at pp. 371-72 (1965).

Conclusion

We ask that this Court give effect to the terms of the Coleman Decision, as written, as well as to the repeated interpretations of that Decision by responsible federal officials. The judgment of the lower court should be reversed.

Respectfully submitted,

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Dated: May 26, 1977
New York, New York

Exhibit A

N.Y. Times, Feb. 17, 1977, at 1, col. 2,
cont'd at 78, col. 1

CONCORDE FLIGHTS BACKED BY CARTER

But President Says He Cannot Make Decisions for New York

By RICHARD WITKIN

President Carter, in messages to the leaders of Britain and France, has reaffirmed the decision of the previous Administration authorizing a 16-month test of Concorde landings in Washington and New York City. But the President's press secretary said yesterday that Mr. Carter still thought the authorization had been a "mistake" and that the President had said in his messages that he "cannot direct" authorities in New York as to what decisions they should make.

The Port Authority of New York and New Jersey, which operates Kennedy International Airport, decided a year ago to ban Concorde flights to Kenndey pending a study of the noise and other environmental effects of at least six months of Concorde operations elsewhere.

The White House said that the Presidential messages to Prime Minister James Callaghan and President Valéry Giscard d'Estaing were sent Tuesday in response

Continued on Page 78, Column 1

CONCORDE FLIGHTS BACKED BY CARTER

Continued From Page 1

to personal messages they had sent President Carter.

A spokesman in Paris said the French President had written Mr. Carter expressing "concern over the latest developments of this problem."

The developments alluded to were the decision of the Port Authority of New York and New Jersey on Feb. 3 to put off until at least March 10 its "yes" or "no" on whether the Concorde could serve Kennedy International Airport.

Suits to Be Delayed

As a result of the latest Carter messages, the British and French agreed yesterday to a further delay in a Federal court suit on the issue that was to have been heard in New York tomorrow. British Airways and Air France charged in the suit, brought months ago, that the Port Authority ban was illegal because it violated United States treaty obligations and because it ran counter to Federal authorization of the 16-month test.

Although Mr. Carter's message appeared to generate some optimism in London and Paris, all immediate signs were that Governor Carey, who has the final say, continued to be strongly opposed to allowing the Concorde into Kennedy.

The Governor's secretary, David Burke, reiterated Mr. Carey's position, particularly his concern about the aircraft's noise, and declared: "The Governor must be completely assured that, in order to benefit a relative handful who could afford to take Concorde flights, the plane would not unduly affect the lives of hundreds of thousands who live in the Kennedy area. Until he is assured, he will remain opposed."

The restrained optimism abroad appeared to stem from the indication by Mr. Carter, as reflected in the White House announcement, "that he shared the desire of the two European leaders to approach this matter in a way that reflects the close friendship between our countries."

Aides to the French President were quoted by The Reuters news agency as having described Mr. Carter's hopes for a friendly settlement as a very positive sign.

Another View

On the other hand, the dominant view of pro-Concorde forces in the United States was that the British and French Governments had been led down the garden path by the Carter messages. They feared the Europeans had made a serious mistake in not pressing now for a court determination of the legality of the Port Authority ban.

Fortifying their view was the tenor of statements by Mr. Carter's press secretary, Jody Powell, at the news conference where the dispatch of the President's message was announced.

In answer to a question, Mr. Powell said the President had not changed the view expressed in campaign statements that the original authorization of the Concorde tests by William T. Coleman Jr., then Transportation Secretary, had been a mistake. Mr. Powell added that, nevertheless, Mr. Carter felt "it would not be wise to terminate" the 16-month test of operations to this country.

The pessimism of Concorde backers also was buttressed by the segment of the White House news release that said: "The President stated [to the European leaders] that he cannot direct the Port of New York Authority or the Governor of New York to reach a particular decision. That is theirs alone to decide."

The issue that then remained was whether Mr. Carter had any intention of trying to bring political pressure on the New York authorities to admit the Concorde on a trial basis.

Might this be a quid pro quo in Washington's consideration of further steps it could take to help New York City out of its dire financial predicament?

The reasoning was that, now that the Concorde had become what some observers called a "summit issue," the President might try to turn the New York situation around to avoid a serious break with his European allies at this early stage in his Administration.

Aides to Governor Carey said there had been no communication between the White House and the Governor on the matter.

The Concorde has been operating to Washington's Dulles International Airport since last May, and it also operates to Rio de Janeiro, Caracas, and Bahrain. The Port Authority, in imposing the ban to Kennedy, said it would remain in effect pending a study of at least six months of flights elsewhere.

Whatever the Port Authority decides, presumably on March 10, can be vetoed by either Governor Carey or New Jersey's Governor Byrne. However, Mr. Byrne has said he would support whatever Mr. Carey wanted in regard to Kennedy, since the airport is in New York State.

Politicians representing the Kennedy area have been virtually unanimous in opposing Concorde flights because of the long-standing distress of community groups about jet flights in general. But Mayor Beame has been an exception, withholding any view on the Concorde.

There has been a growing movement in recent months among both business and labor leaders here advocating a test of

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Exhibit A

CARTER TELLS BRITISH, FRENCH HE CANNOT FORCE NEW YORK TO PERMIT CONCORDE FLIGHTS

President Carter has told national leaders in Great Britain and France that he lacks the power to force the New York and New Jersey Port Authority to permit the Anglo-French Concorde supersonic transport to operate at New York's John F. Kennedy International Airport. In messages transmitted to British Prime Minister James Callaghan and French President Valery Giscard d'Estaing Feb. 16, Carter said he hopes to see the issue of New York landing rights for Concorde solved in a "friendly" way, but stated he cannot direct the port officials to come to any particular decision.

Carter did promise to reaffirm the 16-month trial period for Concorde operations at Washington's Dulles International Airport, originally granted by the Ford Administration last year.

During a question and answer period with reporters following announcement of the two communiques from the White House, Presidential Press Secretary Jody Powell said Carter is still of the opinion that the original decision by then-Secretary of Transportation William T. Coleman, Jr., to initiate the 16-month trial period was a mistake. That ruling was made by Coleman Feb. 4, 1976, when Carter was a candidate for the Democratic Presidential nomination. Powell added, however, that the trial is now "an ongoing process" and Carter feels it would be unwise to terminate such a process once it has been initiated.

Transportation Secretary Brock Adams issued a statement fully supporting the President's position, explaining that Concorde "should be given an opportunity to demonstrate itself before we reach a final decision on SST service." The 16-month trial period at Dulles will permit officials to determine how much demand there is in the U.S. for Concorde service, and will give airport neighbors "the opportunity to judge for themselves how serious an intrusion the Concorde noise levels would be." Adams added that New York officials alone must decide on SST service at JFK. "If New York service should begin," he said, "the Federal Aviation Administration is prepared to begin monitoring there immediately."

* * *

CHAMBER OF COMMERCE CONTINUES TO PUSH FOR USE OF HEARING PROTECTORS

The use of earmuffs and ear plugs to protect workers from excessive occupational noise exposure should be incorporated into the final standard for workplace noise as an acceptable alternative to mandatory engineering and administrative controls, according to the U.S. Chamber of Commerce. In comments submitted to Occupational Safety and Health Administration's docket on the proposed workplace noise standard, chamber said the use of muffs and plugs would afford workers equal or better protection from noise than engineering controls, and at a fraction of the cost.

Combined with preventive measures, such as yearly audiometric tests for workers in suspected noise-hazardous areas, chamber asserted, this alternative method of protecting employes could be carried out at a cost of about $42 per year per employe, instead of the $10.5- to $18.5-billion total estimated for implementation of an engineering program.

"The main objective of any occupational safety and health standard should be to protect workers," chamber asserted. "Where this objective can be achieved in a more reasonable, equally protective manner, that method should be adopted. The wasteful expenditure of huge sums of scarce capital resources cannot be justified, especially for a single hazard which is not life-threatening and which is but one of many potentially hazardous areas subject to OSHA's jurisdiction."

Substantial evidence clearly indicates that the statutory mandates of the Occupational Safety and Health Act of 1970 -- that health standards be "feasible" and "reasonably necessary or appropriate" to accomplish desired objectives -- are not satisfied by the proposed standard. A standard of 90 dBA with a 5 dB time/intensity trading ratio will protect the 98th percentile of workers exposed during a working lifetime, chamber said. Such a standard can be met economically through the use of hearing protectors and effective hearing conservation programs. "A more restrictive standard would force the expediture of huge sums to overprotect the vast majority of workers, while still not guaranteeing the protection of the sensitive minority."

Exhibit B

Exhibit R

U.S. Restrictions On the Concorde

N.Y. Times
Mar. 6, 1977
at 33, col. 1

CALLER NO. 38

MODERATOR: The next call is from John Raymond Lowe of Yorktown Heights, N.Y.

Q. Mr. President?

A. Go right ahead.

Q. How are you doing, Mr. President?

A. Fine.

Q. I'd like to know what your opinion is of the French-English Concorde, and with the elections in France this week, do you feel that rejection of the Concorde would bring the power to the French Communist Party, and also I'd like to say that many French citizens are counting on the SST to keep France from going the Communist way. So what is your opinion on that?

A: O.K. Our Government has already expressed its opinion, Mr. Lau. The previous administration authorized the Concorde to come into our country for a 16-month trial period, and a couple of weeks ago I made a statement that I agreed with that decision and thought the Concorde ought to be given a chance to fulfill its trial itself.

As you know, under the Federal law I have authority over Dulles Airport, and so did President Ford, and we're permitting the test flights to come into Dulles and we're very carefully monitoring the environmental consequences of the SST flights, including primarily noise.

Kennedy Airport in New York is not under my control at all. I have nothing to do with it, no authority over it. The New York Port Authority has that decision to make and I understand that on March 10 they are going to make a decision whether the Concorde can come in for test flights or not. I don't know what that decision will be.

I talked to President Giscard from France yesterday about the Concorde, and also talked to Gov. Hugh Carey to let Gov. Carey know, as President Giscard had asked me to, that the French people consider this a very important issue.

My own statement to President Giscard is that we are not concerned about the SST flights because of commercial competition—about six years ago our own Congress decided not to go into the SST building business—and the whole problem in our country is noise and environmental quality maintenance.

Now, I might say one other thing. I think that the noise standards in our country are going to be stricter and stricter in the future and not more and more lenient, and the same noise standards ought to apply to an airplane whether it's a Concorde or a Lockheed or some other kind or any sort of American commercial plane, so I think we can establish strict environmental laws. I think they ought to apply to the SST flying a course at subsonic speeds and our own commercial planes the same.

But it's the environmental question that will exclude the Concorde if it is excluded and not any sort of animosity toward the French people, nor is it any commercial competition between us and France on SST flights.

Exhibit C

Exhibit C

Brock Adams News Conf. on Draft EIS on SST April 15, 1977 Wash. D.C.

the Department that this take place. Whether or not it can or will be depends upon the New York Port Authority and their testing procedures of whether or not they believe it will meet the noise specifications of that particular airport. But as far as the Federal Government has been concerned, we have authorized it which means that, yes, we have taken the position that as far as our government is concerned it should have an opportunity to be tested. There's no other way we can determine the impact at that particular place in the United States.

QUESTION: Mr. Secretary.

SECRETARY ADAMS: Yes.

QUESTION: So far as you are concerned, the clock isn't running on New York yet.

SECRETARY ADAMS: No, the clock has not started to run. There have been no flights.

QUESTION: Okay, and secondly, when the May 24th period comes up (inaudible).

SECRETARY ADAMS: Yes, they will.

QUESTION: (inaudible) our French and English allies, is there no way that the Federal Government can open up Kennedy to Concorde flights? Is there nothing at all you can do?

SECRETARY ADAMS: Not without changing the whole basic policy of approach that has occurred in the United States to this point, which is that we go with certification of aircraft and with noise rules, and the individual airports determine the

Exhibit D

Exhibit D

so-called footprint or operating noise specifications of their individual fields. And so, we have been observing with our French and British friends precisely the rules we apply here.

Now, the missing piece that is involved that comes from this Environmental Impact Statement is there is no noise rule for subsonic supersonic flight -- it's kind of a difficult one -- subsonic supersonic flight in the United States. There's a statute that prohibits supersonic flight, but there has not been a noise rule established as there have been for all of our and other nations' presently existing subsonic planes, which is contained in Federal Air Regulation 36.

QUESTION: Mr. Secretary.

SECRETARY ADAMS: Yes.

QUESTION: (inaudible).

SECRETARY ADAMS: I can't give you the specific numbers in there. In the individual impact statements for each area you will find those contained in the charts in the back. imply did not add them all up prior to coming to the briefing. We use it in a noise approach environmental impact statement, both an overall effect throughout the United States which I've included in my statement, then individual analyses of the selected 12 points which are contained in the charts in the back.

QUESTION: Would you give us a definition of the difference between seriously impacted (inaudible) the way that

TRUST FUND INCREASES BY $54.2 MILLION IN FEBRUARY

Airport and Airway Trust Fund increased $54.2 million during February, according to latest Treasury Department figures. Fund increased from $3.024 billion in January to $3.078 billion as of Feb. 28. Net tax receipts for the month were $86.5 million, down from January's receipts of $96.7 million. Expenditures also dropped, going from $47 million in January to $32 million in February. Total tax receipts for the fiscal year as of Feb. 28 were $568.2 million, while expenditures for the fiscal year were $225.9 million. See Treasury Department chart *on facing page.*

CAB ALLOWS NORTHWEST SUPER-SAVER FARES PENDING INVESTIGATION

CAB has refused to suspend fares proposed by Northwest which will permit carriers to offer super-saver fares in New York-Los Angeles/San Francisco markets via their connecting services. Fares proposed by Northwest match those proposed by American and others, but the existing provision restricting use of the fare to single-plane service would not apply in Northwest's case. CAB last month approved the super-saver fare concept, which offers 35%-45% discounts off normal coach fares (DAILY, March 16).

United has opposed Northwest's proposed modification of the fare, claiming that Northwest's share of New York-San Francisco markets is so small that it is not a genuine competitor and therefore should not be permitted the exception. United said the Board should continue to restrict the super-saver experiment to New York-Los Angeles markets, rather than allowing it in "limitless" markets contemplated by Northwest. In denying United's complaint, the Board said it would investigate the Northwest fares as part of its super-saver fares proceeding already ordered. The Board also said, however, that United "has offered no convincing evidence that opening availability of the fares to connecting services will significantly alter or debase" the super-saver experiment. (Docket 30616)

CAB APPROVES TWO IATA AGREEMENTS ON PUERTO RICO-EUROPE FARES

CAB Friday approved two International Air Transport Association agreements which will extend (1) basic-season 10/28-day group inclusive tour fares presently available from Puerto Rico to Europe into the peak season at levels consistent with higher peak season fares; and (2) existing CAB-approved South Pacific fares through September 1977. (Docket 29123)

BRANIFF ATTENDANTS SWITCH BARGAINING RIGHTS TO AFA

Braniff flight attendants have become the sixth such group to switch their bargaining rights from the Air Line Pilots Association to the Association of Flight Attendants. An unusually high turnout, which saw AFA get 69% of the votes, was attributed to upcoming contract negotiations. "We plan on coming out of negotiations with one of the best contracts in the industry," said Allen Stout, who heads the attendants' master executive council.

AFA separated from but maintained affiliation with ALPA in 1973. Under an affiliation agreement, flight attendant groups are gradually transferring bargaining rights to the attendants' union.

STATE DEPARTMENT DENIES U.K. PLEA TO SUPPORT CONCORDE

State Department has refused a request by the British government to step in and help support New York landing rights for the Concorde. The British sought the support during bilateral negotiations, claiming the matter relates to the air services agreement. At a Washington press conference, however, Alan Boyd said "international agreements do not amend the Constitution" under which local and state authorities have a say. The U.K.'s Patrick Shovelton said he believes the bilateral agreement does guarantee the landing rights, concluding that "We will go to the Supreme Court" if necessary to get the authority. Court hearing begins April 28.

CONGRESS OKAYS $2 MILLION APPROPRIATION FOR TRANSPORTATION COMMISSION

Congress last week approved and sent to the President a FY 1977 supplemental appropriations bill containing a $2 million appropriation for the National Transportation Policy Study Commission (DAILY, April 8). The House approved the $28.9 billion bill on Thursday by a 264-142 vote and the Senate okayed it by voice vote on Friday. The commission already has $1 million for FY 1977.

ALL CAB MEMBERS will be in Washington this week.

Exhibit E

N.Y. Post, Apr. 30, 1977, at 5, col. 3

U.S. may leave fate of Concorde up to PA

By HANK RODEN

The federal Transportation Dept. said today it does not have the authority to order the Concorde into Kennedy Airport, supporting the position of anti-Concorde forces.

British Airways and Air France had argued at a hearing in U.S. District Court that a decision last year by former Transportation Secretary William Coleman approving Concorde flights at Dulles Airport in Washington and at Kennedy constituted an order.

"The federal government has preemptive power over local governments and agencies) and can exclude regulations by other authorities," the airlines stated.

Lawyers for the Port Authority and for anti-SST groups argued that Coleman's March, 1976, decision did not have the force of an order and did not supercede the PA's power.

The current Transportation Secretary, Brock Adams, told The Post through a spokeswomah:

"This is an area the federal government has not preempted. It is subject to local law, so it is up to the Port Authority to control the issue (of Concorde)."

"That supports our argument," said William Denson of Manhattan, lawyer for Hempstead Town and several Nassau villages fighting to kee the supersonic jet out of Kennedy.

"We can't enlarge the court record, but when it's printed . . . , we can call it to the court's attention by referring to the article in an appendix of an appeal."

Denson's reference to an appeal indicated the belief of some anti-Concorde leaders that the court decision, expected the week of May 9, will go against them.

At Thursday's hearing, Judge Milton Pollack noted Coleman had used the word "order" in his decision.

"Is there an ambiguity in the Secretary's language?" Pollack asked rhetorically. "Coleman was very clear he said 'I order.'"

Patrick Falvey, general counsel for the PA, said he was optimistic. The statement from Adams, he said, "does support our position. I feel we are on very solid ground."

Exhibit F

Exhibit F

Newsday, Apr. 30, 1977, at 11, col. 3

SST Ban Originated In State Department

By Michael Unger

At the same time the State Department was assuring the British and the French that it would do all it could to get clearance for their Concorde supersonic jetliner to land at U.S. airports, State Department lawyers quietly told the Port Authority last year that it had the power to ban flights by noisy planes into Kennedy Airport. Not long afterward, the Port Authority did just that, effectively barring the Concorde from landing in New York and straining relations among the three nations.

Now that ban is being tested in federal court by the operators of the Concorde. A decision in the case is expected within two weeks and it is expected to go a long way toward settling the issue of who will set noise regulations—local officials or the federal government.

Ogden Reid, who at the time was head of the New York State environmental conservation department, confirmed yesterday that he had been the conduit through which State Department attorneys let the Port Authority know that it had the legal power to ban the flights. The British and French governments have a heavy investment in the plane's commercial success and Reid, a former congressman from Westchester, said he had therefore sought the State Department's opinion on the matter. He said he passed on the information to the Port Authority commissioners, who imposed the temporary ban in March, 1976.

Reid and State Transportation Commissioner Raymond Schuler requested the ban in behalf of Gov. Hugh Carey at a meeting with the Port Authority commissioners on Feb. 25, 1976, Reid said, citing noise, safety and broad environmental concerns.

During arguments Thursday in the suit brought by Air France and British Airways, U.S. District Court Judge Milton Pollack frequently addressed the critical issue of whether the federal government has overriding pre-emptive power over noise control or whether that power lies with the operators of local airports such as the Port Authority. The Port Authority argued that it had such power, while the Concorde backers asserted that the federal government supersedes the authority in such matters.

UPI Photo

Judge Milton Pollack

Reid said yesterday that State Department lawyers informed him that the Port Authority could legally impose noise regulations that could exclude Concorde flights at Kennedy as long as such a ban was non-discriminatory, that is, was not designed solely to exclude the Concorde, but covered other aircraft as well. The Port Authority's noise regulations apply to all commercial jets, although some noisier subsonic jets are known to exceed those limits at times.

Attorneys for Long Island anti-noise groups argue that the federal government has not mandated Concorde flights at Kennedy, rather, it has consistently reiterated a policy that local airport operators could establish their own noise limits.

Exhibit G

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Exhibit

THE PORT AUTHORITY
OF NEW YORK AND NEW JERSEY

AIRPORT RULES AND REGULATIONS

As Revised September 1, 1972

Issued by

The Port Authority of New York and New Jersey
Department of Aviation
One World Trade Center
New York, N. Y. 10048

Exhibit H

Exhibit H

300/0-00.

AIRCRAFT OPERATIONS

310/0-00. GENERAL

310/0-01. No aircraft shall be operated on the surface of a public landing area, public ramp and apron area, public passenger ramp and apron area, public cargo ramp and apron area or public aircraft parking and storage area in a careless or negligent manner or in disregard of the rights and safety of others, or without due caution and circumspection, or at a speed or in a manner which endangers unreasonably persons or property, or while the pilot, or other persons aboard controlling any part of the operation thereof, is under the influence of intoxicating liquor, or any narcotic or habit-forming drug, or if such aircraft is so constructed, equipped or loaded as to endanger unreasonably or to be likely to endanger unreasonably persons or property.

310/0-02. The pilot or other person aboard engaged in the operation of any aircraft (except when subject to the direction or control, for ground movement purposes, of the Federal Aviation Administration or other Federal agency) being operated on the surface of any operational area, public landing area, public ramp and apron area, public passenger ramp and apron area, public cargo ramp and apron area or public aircraft parking and storage area must at all times comply with any lawful order, signal or direction of an authorized representative of the Port Authority. When operation of of such aircraft is controlled by lights, signs, mechanical or electrical signals or pavement markings, such lights, signs, signals and markings shall be obeyed unless an authorized representative of the Port Authority directs otherwise.

310/0-03. The Manager shall have authority to detain any aircraft for non-payment of storage charges due to the Port Authority for storage at an air terminal.

310/0-04. The Port Authority shall have authority to deny the use of an air terminal to any aircraft or pilot violating Port Authority or Federal regulations, whether at such air terminal or elsewhere.

310/0-05. The operator of any aircraft involved in any accident causing personal injury or property damage at an air terminal shall report promptly of said accident to the Manager.

310/0-06. The pilot or operator thereof shall be responsible for the prompt disposal of aircraft wrecked or disabled at an air terminal and parts of such aircraft as directed by the Manager: in the event of his failure to comply with such directions such wrecked or disabled aircraft and parts may be removed by the Port Authority at the operator's expense and without liability for damage which may result in the course of such removal.

310/0-07. During an emergency, all aircraft shall clear active runways and shall hold their positions unless otherwise directed by the Control Tower.

310/0-08. No person shall interfere or tamper with any aircraft at an air terminal, or start the engine of such aircraft without the operator's consent.

310/0-09. Passengers shall not be permitted to enplane or deplane except in the presence of authorized personnel.

310/0-10. No aircraft may be loaded or unloaded except in designated areas without permission and all passengers must be channeled through established routes to and from the air terminal.

310/0-11. Cleaning of or otherwise maintaining aircraft shall be accomplished only in areas designated for that purpose by the Manager.

310/0-12. No aircraft shall cross an air terminal highway or a public highway at an air terminal under its own power or under tow without permission.

310/0-13. In the event of spillage or dripping of gasoline, oil, grease, or any other material which may be unsightly or detrimental to

the pavement in any area at an air terminal, the same shall be removed immediately. The responsibility for the immediate removal of such gasoline, oil, grease, or other material shall be assumed by the operator of the equipment causing the same or by the tenant or concessionaire responsible for the deposit thereof on the pavement.

310/0-14. The heating of engines at an air terminal shall be done only by the use of steam. hot water, hot air or approved electric heaters.

310/0-15. No aircraft may use a gate position without prior permission.

320/0-00. LANDING AND TAKING OFF

320/0-01. The Port Authority may prohibit aircraft landing and taking-off at any time when, and under any circumstances under which the Manager deems such landings and take-offs likely to endanger persons or property, except for emergency landings.

320/0-02. No person shall navigate any aircraft, land aircraft upon, fly aircraft from, or conduct any aircraft operations on or from an air terminal otherwise than in conformity with then current Federal Aviation Administration and National Transportation Board rules and regulations.

320/0-03. No aircraft may land or take-off at an air terminal without prior permission unless it is equipped with a functioning radio capable of direct two-way communication with the Control Tower. except in case of emergency. In addition. no aircraft may land or take-off at LaGuardia Airport unless it is equipped with a functioning radio capable of direct two-way communication on the VHF frequency designated as ground control, except in the case of an emergency.

320/0-04. No helicopter may land or take-off at Port Authority waterfront heliports unless it is equipped with a two-way radio capable of transmitting and receiving 123.65 megacycles.

320/0-05. No motorless aircraft may land or take-off at an air terminal without permission.

320/0-06. No jet or turbo-prop aircraft may land or take-off at an air terminal without permission.

320/0-07. Jet-assisted take-offs shall not be made at any air terminal without obtaining permission and notifying the Control Tower in advance.

320/0-08. No aircraft shall land, take-off or taxi at an air terminal with a student pilot at the controls.

320/0-09. No person shall practice aircraft landings, or take-offs at an air terminal without permission.

320/0-10. No aircraft shall use any part of the public landing areas considered temporarily unsafe for landing or taking-off, or which is not available for any cause; the boundaries of such areas will be marked with orange flags by day and red lights by night, and notice thereof will be given to the Control Tower by the Port Authority.

320/0-11. Aircraft landing at an air terminal shall make the landing runway available to others by leaving the active runway as promptly as possible.

320/0-12. No aircraft on a dual tandem gear having an actual gross weight of over 200,000 pounds and no aircraft on a dual gear having an actual gross weight of over 161,000 pounds, including passengers, cargo, fuel, equipment, etc. shall land, take-off or taxi at LaGuardia Airport without permission.

320/0-13. No aircraft on a dual tandem gear having an actual gross weight of over 300,000 pounds, including passengers, cargo, fuel, equipment, etc. shall land, take-off or taxi at Newark Airport without permission.

320/0-15. No helicopter having an actual gross weight of over 20,000 pounds including passengers, cargo, fuel, equipment, etc. shall land, take-off or taxi at the West 30th Street Heliport without permission.

320/0-16. No aircraft on a dual tandem gear having an actual gross weight of over 335,000

pounds including passengers, cargo, fuel, equipment, etc. shall land, take-off or taxi at Kennedy International Airport without permission.

330/0-00. STARTING, TAXIING, TOWING AND PARKING

330/0-01. Aircraft shall not be positioned, started or taxied so that propeller slipstream or jet engine exhaust blast may cause injury to persons or do damage to property or where it may generate turbulence across taxiways or runways so as to endanger the safety of operation on an air terminal. If it is impossible to taxi such aircraft without compliance with the above, then the engine(s) must be shut off and aircraft towed.

330/0-02. Aircraft engines shall be started and warmed-up on an air terminal only in places designated for such purposes by the Manager. No jet or turbo-prop aircraft engine shall be run-up except in areas authorized by the Manager.

330/0-03. No person shall start an aircraft engine at an air terminal unless there is a qualified attendant standing by outside the aircraft with a twenty (20) pound or larger dry chemical fire extinguisher or unless the engines are equipped with their own fire control system.

330/0-04. No aircraft shall be started, run or taxied at an air terminal unless a certificated pilot certificated to operate that particular type of aircraft or a certificated A and P mechanic qualified to start, run or taxi that particular type of aircraft shall be attending the controls.

330/0-05. No aircraft engine shall be started unless the main landing wheels are chocked and the brakes of the aircraft fixed and locked, unless in the opinion of the Manager, proven procedures such as those followed by the scheduled airlines, are equally safe.

330/0-06. In the case of helicopters, only certificated helicopter pilots shall attend the controls and no helicopter shall be left running

when there is not a certificated helicopter pilot or certificated A and P mechanic at the controls.

330/0-07. All aircraft which are being taxied, towed or otherwise moved at an air terminal shall be under full control and shall move or be moved at a reasonable speed.

330/0-08. Whenever any aircraft is being taxied, towed or otherwise moved on the public landing area, public ramp and apron area, public passenger ramp and apron area, or public cargo ramp and apron area, there shall be a person attending the controls of the aircraft who shall monitor by radio the transmitting frequency in use by the Control Tower or who, if necessary, will cause that frequency to be monitored by another person in the aircraft at the time. In the event of radio equipment failure. the Control Tower may use an Aldis Lamp for communication.

330/0-09. No person shall park an aircraft or leave the same standing on a public landing area, public ramp and apron area, public passenger ramp and apron area, public cargo ramp and apron area, public aircraft parking and storage area, or operational area at an air terminl except at such places as may be prescribed or permitted by the Port Authority. When in public storage areas, those aircraft for which fittings are provided shall be required to make proper use thereof.

330/0-10. Helicopters shall have braking devices and/or rotor mooring tiedowns applied to the rotor blades.

330/0-11. Upon direction from the Manager, the operator of any aircraft parked or stored at an air terminal shall move said aircraft from the place where it is parked or stored to any other designated place: if the operator refuses to comply with such direction, the Port Authority may tow said aircraft to such designated place at the operator's expense, and without liability for damage which may result in the course of such moving.

330/0-12. No aircraft shall be taxied into or out of a hangar under its own power.

330/0-13. Every aircraft parked on a public ramp or apron area, public passenger ramp or apron area, or public cargo ramp and apron area shall have its running lights lighted during the hours between sunset and sunrise except in areas designated by the Manager.

330/0-14. All aircraft being taxied, towed or otherwise moved at an air terminal shall proceed with running lights on during the hours between sunset and sunrise.